

Procurement rules under regional development programs – the case of Slovakia

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- Public procurement procedures - how it works
- Procedures for public procurement: applicant's point of view vs Management Authority/intermediate body
- Control of public procurement in ESF and control from the Single Public Procurement Authority
- Electronic procurement system - Slovakia's experience
- Discussion

Public Procurement & EU Funds

- The most sensitive and usually long-term phase of the project/investment process (sometimes procurement process takes longer than all other project preparation and implementation activities, including e.g. construction works)
- Most of the corruption cases are related to procurement processes – Managing Authorities (MAs) / Intermediary Bodies (IBs) therefore focus their capacities on control of the Public Procurements (PPs)
- Slovakia – complicated procurement legislation and constant changes to it (Act no. 343/2015 Coll. on public procurement approved in DEC 2015 has been amended/changed 18-times until today, so almost 3-times per year ...)
- Much stricter rules (and penalties) apply to Public Institutions' PPs and to EU funds projects

Public Procurement in Slovakia

- One of the first Central European countries to adopt an Act on public procurement with its 2006 law establishing a regulatory framework in line with EU guidelines
- Centralised procurement system
- The Office for Public Procurement (UVO – OPP – <https://www.uvo.gov.sk/>) acts as the central State administration authority for public procurement, and controls whether public procurement procedures are in compliance with the law; established as at Jan 1, 2000; currently app. 200 employees.
- Specific procurement methods, **depending on the value and type of contract** (2 steps procedure) – the PP thresholds:
 - Slovakia applies different rules to public procurement above and below EU thresholds. For supplies, services, and works contracts of less than EUR 5,000, contracting authorities are permitted to purchase directly, without publication. Above EUR 5,000, but below EUR 70,000 for supplies and services, and EUR 180,000 for public works, simplified procedures may be applied. For goods and services contracts of EUR 70,000 up to EUR 214,000, and public works contracts of EUR 180,000 up to EUR 5,350,000, national rules apply.
 - https://ec.europa.eu/growth/single-market/public-procurement/rules-implementation/thresholds_en

Public Procurement in Slovakia II.

- Procurement related data such as pre-contract informational notices, calls for tenders, status of contracting processes updates, and contract award notices are made available through the **national electronic public procurement system, EVO** – <http://www.uvo.gov.sk/portal-evo> . The OPP offers sample tender documents and written guidance for contracting authorities, publishes past legal opinions, and operates a helpdesk to support users of the online platform.
- Tools: THE PROCUREMENT JOURNAL (collects all tenders); THE REGISTRY OF PUBLIC PROCURERS; PROFILES OF PUBLIC PROCURERS; THE REGISTRY OF THE PARTNERS OF PUBLIC ADMINISTRATION. CENTRAL REGISTER of CONTRACTS - <https://www.crz.gov.sk/central-register-of-contracts/>
- The OPP set up a Register of References in 2014, which consists of a data collection system contracting authorities and suppliers.
- Transparency International Slovakia manages a single-stop online portal for public procurement analysis called 'Open Public Procurement', which publishes daily automatic downloads of tender notices from the OPP, and provides easy-to-use tools allowing browsing and visualisation of procurement expenditures by procurers, suppliers, sectors and regions - <https://tender.sme.sk/en/>
- Slovakia has a multi-stage process for aggrieved bidders to seek remedies. First, any issues with a procedure must be brought to the attention of the relevant contracting authority. If not resolved to the satisfaction of the complainant, they can bring the matter to the OPP, which acts as a first instance appeal body. The second instance is exercised by the Council of the OPP established within the OPP. Ultimately, administrative claims are lodged before the Regional Appeal Courts and the Supreme Court, which is the last recourse instance.

Applicant / Beneficiary role

- Applicant must prepare a project budget before submitting the project application:
 - Flat rates and benchmarks set by MA/IB
 - Market research – at minimum 3 price offers (some MAs are requesting min. 5 price offers)
 - Certified Construction Costs Estimating Software (CENKROS, UNIKA ...), stamped by authorized designer or cost engineer
- The applicant/beneficiary shall submit the relevant PP documentation in paper or electronic form via ITMS2014+. The minimum mandatory scope of the documentation submitted via ITMS 2014+ shall be the same as the scope of the documentation published in a profile under article 49a of the Act on Public Procurement depending on the value and type of contract (this obligation shall apply to all applicants/beneficiaries).
- Ex ante controls shall not be mandatory for under-limit contracts below EUR 5,000; or under-limit contracts arranged through an electronic marketplace, the estimated value of which is lower than or equal EUR 40,000 for goods, foods and services and lower than or equal to EUR 200,000 for construction works.

EU Funds & PP

- Exclusive and final responsibility is carried out by the applicant/beneficiary as a public procurer or procurer for execution of PP while respecting generally binding EU and national legal regulations, basic principles of public procurement and the Grant Contract
- The MA shall perform an administrative control of compliance with EU and national rules for procurement of goods, services, construction works and related procedures
- The aim of a PP control and procurement control shall be to control accordance of a financial operation with EU and national legislation, guidelines and methodological instructions of the EU Funds Central Coordination Authority and the MA
- The MA shall control compliance with the basic PP principles being:
 - equal treatment;
 - non-discrimination of participants;
 - transparency, including elimination of conflict of interest; the area of conflict of interest under performance of controls shall be regulated by a methodological instruction issued by the CCA;
 - **economy and efficiency.**

PP control performed by MA/IB

- The purpose of a PP control and procurement control is to ensure economical, efficient and expedient use of public administration funds allocated for the OP concerned and to verify adequacy of the requested expenditure while respecting the conditions of the Grant Contract and applicable generally binding EU and national legal regulations.
- According to the time, scope and subject of a PP control, it shall be categorised as follows:
- a) ex ante control before PP is published ("**first ex ante control**"),
 - a control after signing of the Grant Contract, or a PP control within major and national projects listed in the list of projects and not yet submitted as AG.
- b) ex ante control before a contract with a successful tenderer is signed ("**second ex ante control**"),
 - a control of PP not falling under point b) hereunder and exceeding the limit with regard to the estimated contract value; and a second ex ante control of PP within major and national projects listed in the list of projects and not yet submitted as AG.
- c) ex post control ("**standard ex post control**"),
 - a control of PP which has been a subject of a second ex ante control ("follow-up ex post control"),
 - a control of contracts, and a control of contracts arranged through an electronic marketplace,
 - a control of PP in which several beneficiaries procure goods, services or works through a central procurement organisation,
 - a control of PP of national projects and major projects listed in the list of projects and not yet submitted as AG,
- d) **control of amendments.**

PP control: other stakeholders I.

- The MA shall cooperate in the field of control with the Office for Public Procurement (OPP), with the Antimonopoly Office of the Slovak Republic (AMO) and with criminal justice authorities.
- MA may request the OPP to do the following activities:
 - ex ante evaluation of the documentation of the planned PP - above-limit contract, design tender and negotiated procedure,
 - personal consultation regarding a partial problem in PP - regardless of the PP procedure, contract limit or stage of a concrete PP process,
 - drawing up of an opinion on consistence of partial problems in PP with the APP prior to conclusion of a contract - regardless of the PP procedure and contract limit,
 - performance of a PP control prior to conclusion of a contract (second ex ante control) in case of above-limit contracts or above-limits contracts awarded through a below-limit procedure, depending on the risk analysis outcome,
 - performance of a PP control after conclusion of a contract (standard ex post control) depending on the risk analysis outcome in case of above-limit contracts, below-limit contracts and design tenders, and performance of a PP control after conclusion of a contract regardless of the PP procedure and contract limit.

PP control: other stakeholders II.

- The AMO intervenes in cases of cartels, abuse of a dominant position and vertical agreements; if a potential breach of competition is identified, the MA may:
 - request the AMO in writing to provide consultations (written, personal or combined) on selected parts or findings in the controlled PP and their potential conflict with the Competition Protection Act – regardless of the PP procedure or stage,
 - submit a filing because a breach of the Competition Protection Act is suspected.
- If the MA, during a PP control or a procurement control, discovers facts indicating that a criminal offence has been or might have been committed, the MA shall inform criminal justice authorities.

PP Risk analysis

- Conducting of a risk analysis shall be conditional on ITMS2014+ support and the MA shall conduct it immediately after submission of the relevant documentation by the applicant/beneficiary.
- A risk analysis of the controlled PP is a tool for identification of PP risks requiring cooperation with the Office for Public Procurement (OPP)
- The outcome of a risk analysis shall be a score, which, pursuant to the evaluation key, shall classify the controlled PP as follows:
 - PP does not constitute an increased risk = the MA may not request the OPP to control PP;
 - PP constitutes a certain risk = the MA may request the OPP to control PP;
 - PP constitutes an increased risk = the MA shall be obliged to request the OPP to control PP.

Corruption risk indicators related to procurement

- Conflict of interest – e.g. social or personal contacts between persons representing the successful tenderer and the public procurer;
- Division of contracts or illegal merging of contracts – to avoid the procedure of awarding an above-limit contract;
- Estimated contract value just below the limit of the tender procedure;
- Price offers are unusually close to the estimated contract value or to the approved project value;
- Tender requirements tend to favour a concrete tenderer - the public procurer defines e.g. unusual conditions of participation, concrete designation of goods, brands instead of general characteristics, or specific criteria;
- Accelerated procedure is applied – e.g. shortening of the actual timeframe for submission of offers, applications for participation;
- Apparently high price offers, and/or vice-versa some items or components of an offer are inadequately low compared to other offers;
- Restricted access of candidates/tenderers to information/documentation;
- Low number of offers/applications for participation (1 or 2);
- Offers excluded because of formal shortcomings or because of questionable reasons;
- Complaints from unsuccessful candidates/tenderers, media coverage;
- Changes made immediately after conclusion of a contract or when signing a contract (new amendments to the contract);
- Cascade (chain) subcontracting – contractor supplies the goods or services through several subcontractors whose added value is not clear, and/or an unsuccessful tenderer is a subcontractor of the successful tenderer.

Electronic Marketplace

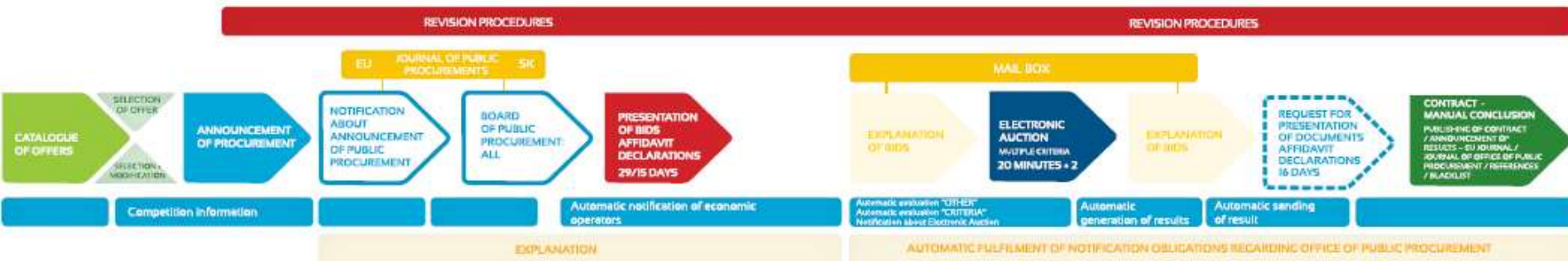
- For all supplies, services and works above EUR 1,000 that are widely available on the market, Public contracting authorities are required to use the dynamic purchasing system, the Electronic Contracting System (EKS) – <https://www.eks.sk/>. Electronic market place for below-threshold contracts (since 07/2014), and for above threshold contracts (since 12/2015).
- Electronic contracting system is a tool for fully automated placement of tenders, which automatically generates contracts based on results of the competition without any human input which is performed anonymously, in an auction style manner, with unlimited public control, including automatic notification of relevant economic operators.
- It is also a central trading place which is obligatory for Public contracting authorities and voluntary for anybody who registers to the system, which is free of charge.
- Preconditions: existence of political will; legislation changes; technical improvement of electronic tools; change negative perception about public procurement in the eyes of economic operators.

How it works?

ELECTRONIC MARKET PLACE



ABOVE-THRESHOLD ELECTRONIC MARKET PLACE



Benefits of E-market

- 1. Efficiency, effectiveness and removal of administrative burden - significant reduction of time for process administration; structured form of orders, that is significant reduction of its scope; most of the actions is executed by the information system ...
- 2. Transparency and elimination of corruption behaviour - minimization of personal interventions; automatic evaluation and generation of contract agreements by the information system; public control of the procurement process without any restrictions; same time, same manner and same conditions for all suppliers; simplicity and understandability ...
- 3. Quality and synergy – standardization of structure and descriptions of subject matters and contract agreements; emergence of benchmarks for descriptions and prices also affecting above limit contracting; creation of reference formulas of purchasing and statistics on behaviour of suppliers ...
- 4. Support of SME suppliers – simplification of bidding process; provision of free advisory for registration, placement of bids and bidding; accessible from anywhere ...
- 5. Saving time, money and natural environment – shortening of public procurement process on average from 7 weeks to 1 week; reduction of administrative burden by removing “paper and envelop” ...



Thank you for your attention, and Q&A